

## **OfS's role as a sector regulator: Case study on student welfare and safeguarding**

### **Issue**

1. The OfS's regulatory framework sets out how it will perform the functions granted to it by the Higher Education and Research Act (HERA) 2017. We have said in the regulatory framework that we will do this in two ways:
  - a. We will directly regulate individual providers through the use of conditions of registration that set and protect a baseline of performance for all providers
  - b. We will regulate at a sector-level to create the conditions for informed choice, competition, and continuous improvement.
  
2. As we regulate at sector-level we have said that we will, among other things, 'champion issues and share evidence and examples of effective and innovative practice for students... [and] be unafraid to speak out on behalf of students, and in particular will promote value for money for students and taxpayers, and will highlight inequalities wherever [we] see them.'
  
3. Through the case study of student welfare and safeguarding this paper explores which of the OfS's functions it is performing in this area as a sector regulator. The aim, via the case study, is to have clarity about the basis for our activities and therefore the basis on which we may fund these sector level activities through registration fees from providers. Student welfare and safeguarding has been chosen as the case study because in this area we are not directly regulating individual providers through baseline conditions for providers' welfare services. Instead we are seeking to shine a spotlight on key issues through interventions across the sector as a whole, where we can add value and make a difference. For working definitions of what we mean by student welfare, wellbeing and safeguarding please see the discussion section of this paper (page 4 refers). The themes they embrace include experiences of discrimination, sexual violence, harassment, hate crime, cyberbullying, mental health and vulnerability to being drawn into terrorism.

### **Recommendations**

4. The OfS board is invited to:
  - a. Consider and advise on the approach we have set out for this aspect of our sector-level activity

- b. Consider and advise whether the case study sets out an appropriate approach to performing our functions at sector-level.

### **Timing for decisions**

5. This paper seeks the board's advice on these issues to help shape the OfS's work in this area.

### **Further information**

6. From from Yvonne Hawkins, Director for Teaching Excellence and Student Experience (yvonne.hawkins@officeforstudents.org.uk or 0117 931 7214).

## Background

7. The OfS's approach to regulation is underpinned by the functions, duties and powers given to it in the Higher Education and Research Act 2017 (HERA). The Regulatory Framework sets out how we intend to perform the HERA functions.
8. Section 2 of the Regulatory Framework outlines how the OfS will regulate at sector-level to create 'the conditions for informed choice, competition, and continuous improvement'. Such sector level regulation will allow us to champion issues, identify gaps, co-produce and share evidence and examples of effective and innovative practice.
9. The Regulatory Framework does not provide an exhaustive account of where and how we will regulate at sector-level but this might include activities to provide information, advice and guidance for students and the promotion of student welfare, wellbeing and safeguarding for example.
10. As we regulate at sector-level we need to be clear which of our legal functions we are performing. Taking our case study example, HERA does not provide the OfS with a specific function that obviously relates to student welfare and safeguarding. Instead we are suggesting that we take a broad view of the following HERA function:
  - Section 23(1) allows the OfS to assess, or make arrangements for the assessment of, the quality of, and the standards applied to, higher education provided by English higher education providers. Here, we would consider that the 'quality of higher education' includes the broader experiential aspects that include student welfare and wellbeing.
11. In addition, the OfS has responsibilities set out under separate legislation which have a bearing on how it undertakes a student welfare and safeguarding role:
  - The Counter-Terrorism and Security Act 2015 which delegates responsibility for monitoring the Prevent duty to the OfS<sup>1</sup>
  - The Public Sector Equality Duty under the Equality Act 2010, which requires the OfS to have due regard to eliminating unlawful discrimination, foster good relations between different groups and take steps to advance equality of opportunity.
12. OfS's role in relation to Prevent monitoring must therefore inform a key part of the OfS's overall approach to safeguarding and wellbeing of students. There are also a number of further legal obligations on providers including specific requirements around safeguarding children and vulnerable adults, as well as the duty of care which providers have towards their students. Providers themselves have an overall

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<sup>1</sup> See delegation letter from Secretary of State at the Department of Education, <https://www.officeforstudents.org.uk/media/1301/prevent-ofs-delegation-letter.pdf>

responsibility for general student and staff welfare. While there is no clear definition of what this means in practice, a provider's duty of care towards students usually means ensuring the delivery of a service to a reasonable standard, and acting to protect the health, safety and welfare of students<sup>2</sup>. There are also the wider obligations under the Equality Act 2010. A core component of effective safeguarding therefore is for providers to ensure balance between all legislative responsibilities that are placed on them.

### Regulatory framework

13. The regulatory framework sets out where the OfS will play a role in protecting and promoting students' broader HE experience. These include that '***the OfS has a duty to have regard to promote equality & diversity across the whole student lifecycle***' and in taking forward one of its four primary objectives, the OfS will ensure that '***all students, from all backgrounds, with the ability and desire to undertake higher education, are supported to access, succeed in, and progress from higher education***'.
14. In addition, the OfS regulatory approach seeks to champion issues where there may be systemic issues or gaps in the HE system and that we will 'be unafraid to speak out on behalf of students.' The OfS is well placed to bring a strategic perspective to this area of work to respond to systemic issues where change is needed to ensure the best possible outcomes for students. However, having regard to the protection of institutional autonomy will remain at the heart of our approach and we will never prescribe how autonomous providers should act or what methods they should use. Instead, the OfS will be able to use its position to champion and shape sector wide debate and may then focus innovation in particular areas, or encourage the dissemination of best practice and 'what works' more readily.
15. To illustrate some of the considerations and complexities in how the OfS will develop and implement its approach to student welfare, safeguarding and wellbeing as part of its sector-level regulation, we have expanded upon the case study below. The complexity and intersectionality of different legislation makes this an interesting test case to consider some of the issues outlined above and how we can begin to conceptualise a role for the OfS in creating the conditions for innovation at a sector level. We have provided working definitions of what we mean by referring to welfare, safeguarding and wellbeing below<sup>3</sup>.

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<sup>2</sup> The Higher Education Code of Governance, Committee of University Chairs (CUC), updated 2017: Appendix 1 Statement of Primary Responsibilities 13. <http://www.universitychairs.ac.uk/wp-content/uploads/2015/02/Higher-Education-Code-of-Governance-REVISIED-2017.pdf>

<sup>3</sup> For the purposes of this paper we are using the following definitions: Welfare - the systems, policies and processes used by providers to exercise their duty of care towards their students and staff across the academic and non-academic spheres/spaces; Wellbeing: a state of health – both physical and mental – and happiness; Safeguarding: The systems, policies and cultures through which providers keep students safe from harm, and respond when incidents occur.

## Discussion

### Student welfare and safeguarding

16. All students whether undergraduate or postgraduate, full-time or part-time, are entitled to enjoy a safe and positive experience in higher education. Wellbeing and safeguarding issues faced by students today cut across key themes such as states of mental ill-health, experiences of discrimination, harassment, hate crime, cyberbullying and stresses particularly prevalent in the student population, for example concern about finances and the significant transition point that entry to higher education represents in people's lives, particularly for young people. The following information highlights the range and scale of the issues faced by students today:

- A recent study undertaken by the Institute for Public Policy Research has highlighted a fivefold increase in the number of first-year undergraduates reporting a mental health concern<sup>4</sup>
- The Office for National Statistics indicating that, for the first time, suicide rates of students has now overtaken suicide rates of non-students aged 20-24<sup>5</sup>
- A 2015 NUS poll of new students found that 17% of respondents had been victims of some form of sexual harassment during their first week of term and 29% had witnessed sexual harassment directed at someone else.

17. This area is an example where the OfS could play a key role to promote practice that underpins a positive student experience and successful outcomes that students are telling us matter to them. The consultation response to the Regulatory Framework contained a strong message from individual students and student bodies that they wanted to see the OfS show support for key aspects of students' non-academic experience. Therefore, we propose to define the 'quality of higher education' as set out in the HERA s.23 (1) to cover the student experience that incorporates their academic experience as well as their welfare, wellbeing and safeguarding. **We would welcome the views of the board on this approach.**

#### OfS strategic priorities

18. In the recent Guidance Letter to the OfS, the Department for Education identified as a priority for Financial Year 2018/19 to '***promote providers' active engagement with the welfare and wellbeing of their students***'. In particular this included a focus on potentially new areas of work, such as student mental health support measures proposed through both Universities UK's Mental Health in Higher Education programme and initiatives resulting from the current consultation on the Government's Transforming Children and Young People's Mental Health Provision

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<sup>4</sup> <https://www.ippr.org/publications/not-by-degrees>

<sup>5</sup> <http://www.bbc.co.uk/news/education-43739863>

Green Paper. It also included a focus to promote continued positive engagement with work to counter harassment and hate-crime in HE and the importance of working collaboratively with key partners including UUK, the Equality and Human Rights Commission, Advance HE, the OIA and other key organisations.

19. The OfS recently published its Strategy which has clear alignment with our regulatory objectives and our Business Plan sets out the activities necessary to achieve these. Mental Health has been identified as a priority in the OfS business plan. This is an acknowledgement of the impact that mental ill health has on the experience of students, and a response to the fact that that schools, colleges and universities are seeing significant increases in declarations and support requirements for mental ill health in their learning communities.
20. Schools and universities are complex social environments that engage with vulnerable groups susceptible to huge transitional changes. OfS is well placed in the collective student interest to join up the work that is currently being carried out in response to this growing issue and will look to engage with not only providers but also schools, colleges, local authorities, the NHS and also ensure that this work crosses Government Departmental agendas.
21. As well as mental health, the OfS has identified safeguarding students from harm arising from being victims of sexual violence, harassment and hate crime (both on campus and online), as being a priority for continuous improvement, supporting providers at a system level through the development and dissemination of effective practice, proactive stakeholder engagement with representative, grassroots, survivors and practitioner groups as well as commissioning and analysing research and insight to better understand and tackle the issues. The first phase of this work will focus on delivering value from the 119 Catalyst Fund projects to tackle sexual violence, hate crime and online harassment, which will be active throughout 2018-19.

## How might the OfS enact its role?

### Principles underpinning our approach

22. Using the case study example of student welfare and safeguarding, we have developed a set of principles which might underpin how the OfS regulates at a sector level. These are:
  - **Working collaboratively and in partnership** with key organisations and experts across the sector and Government
  - Developing an **evidence-led approach** to share effective practice, identify market failures and **support innovation** in the areas of greater risk and need
  - Having regard to the need to protect **institutional autonomy** and never being prescriptive about what responses individual providers should take

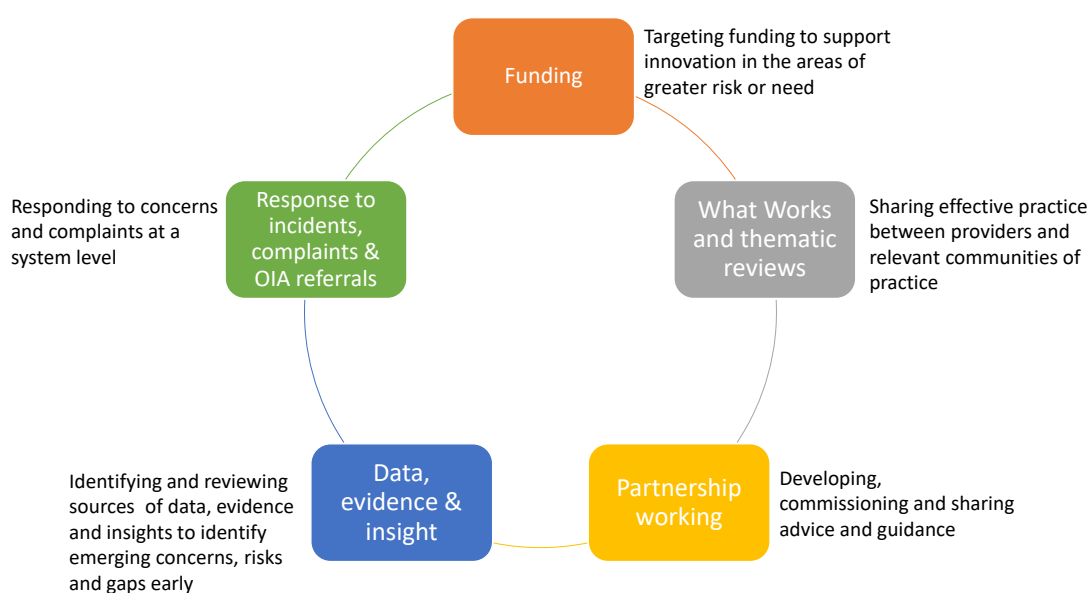
- Ensuring our **work is informed by and co-produced with students and experts** and ensuring that we are focussing on the key issues
- Taking an **inclusive and whole institution approach**, considering the full diversity of the student population
- **Tackling issues at a system level** while ensuring responses are targeted and outcome-driven.

23. We have a unique 'helicopter' position to develop a sector-wide view of issues and to identify key concerns and core trends faced by all types of students in all parts of the sector; OfS can use this position to understand where the sector can have greatest impact on the experiences of students.

24. Applying the above principles in relation to student welfare and safeguarding, we would envisage a strong sector locus for us to work collaboratively with experts in this area, to champion and shine a spotlight into the work that is already being carried out, to raise the profile of the issues and identify any gaps, share evidence-led understanding of welfare and wellbeing issues in an HE context and facilitate and catalyse change in the sector. A core element of our role will be to feed in the 'student voice' into this programme of work and ensure student concerns and priorities are heard and that effective, evidence led responses are integrated into our work.

Regulatory tools to deliver clearly defined outcomes

25. There are a number of regulatory tools we would envisage using in our student welfare and wellbeing work. These might include:



## **Next steps in relation to student welfare and safeguarding**

26. Following discussion at the board, we intend to undertake further scoping work over the summer working with key partners and sector experts to develop a coherent strategy on the OfS's role in supporting student welfare and safeguarding. In relation to safeguarding our focus will be secure the maximum value from the 119 catalyst funded projects that are focused on tackling sexual harassment, violence, hate crime and online harassment. We have commissioned an evaluation and support programme which will disseminate the learning and good practice generated by this activity. A new priority is support for student mental health which acknowledges the need for providers to have a mental health strategy and of the impact of mental ill health on the experience of students. A core component of this work will be to develop clearly defined objectives, outcomes and outputs for our work so we are clear what championing this agenda in the student interest means in practice. We will bring this strategy back to the board in the autumn for further advice and discussion.

## **Resource implications**

27. We will be alert to how we shape and implement our student welfare and wellbeing activity as we design the future organisational structure of the OfS and allocate resource to relevant functions and activities.

## **Risk implications**

28. We need to be clear both internally and externally about the way we will perform our legal functions, particularly as these relate to regulation at sector-level. Clarity in this area will help us to respond positively to any challenge we may receive about mission creep. In the case study example here of student welfare and safeguarding, we have in our recently published Business Plan identified the promotion of student mental health as a priority; inaction would be a reputational risk and a lost opportunity to contribute to this generational challenge.

## **Communications and engagement**

29. A core element of further scoping work will be to develop a coherent communications strategy that explains our approach to sector regulatory issues including the parameters of our remit and the regulatory tools that we will use to create the conditions for innovation and improvement at a sector level. This is particularly important in relation to our work on student welfare, safeguarding and wellbeing where there is a clear imperative for the OfS to work collaboratively with partners to identify how we can add value. This will be a particularly acute consideration in relation to student mental health as we need to determine where and how OfS can add value in partnership with providers, the NHS, local government and the third sector. As part of our scoping work over the summer we will work with these key partners to develop strategy and an associated communications plan.



30. Our intention is to make this paper available on the OfS website in line with our standard publication procedures.